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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HILL RHF HOUSING PARTNERS, L.P., a California limited partnership; OLIVE RHF HOUSING PARTNERS, L.P., a California limited partnership,

Petitioners/Plaintiffs,

vs.

CITY OF LOS ANGELES; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT, a special assessment district in the City of Los Angeles; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION, a California nonprofit corporation; and DOES 1 through 10, inclusive,

Respondents/Defendants

CASE NO. BS170127
[Assigned to Hon. Amy D. Hogue, Dept. 86; Related to Case No. BS170352]

PLAINTIFFS'/PETITIONERS' REPLY BRIEF; DECLARATION OF STEPHEN L. RAUCHER

[Filed concurrently with Notice of Lodging of Administrative Record, Administrative Record, Evidentiary Objections to Declaration of Suzanne Holley, and Objections to DCBID's Request for Judicial Notice]

Trial Date: September 19, 2018
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Dept: Dept. 86

Complaint Filed: July 3, 2017

REPLY BRIEF

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I. INTRODUCTION

DCBID fails both prongs of Article XIII D § 4(a): (1) DCBID's assessments are not based only on special benefits because DCBID fails to properly separate and quantify the general benefits produced by the Safe and Clean Programs, the Economic Development/Marketing Programs, and the Management Services, and because DCBID fails to take into account the fact that RHF's properties do not benefit in the same manner as other assessed properties within the District; and therefore (2) DCBID's assessments are not proportionate to and exceed the special benefit conferred on RHF's properties.

Respondents' reliance on *Dahms v. Downtown Pomona Property & Business Improvement Dist.,* 174 Cal.App.4th 708 (2009), is misplaced and misleading.[1] First, Respondents omit the fact that in *Dahms,* the business improvement district had, at the outset, decided to levy discounted assessments on nonprofit entities (only 5 percent of what they would otherwise have to pay), which the *Dahms* court approved. Unlike the *Dahms* business improvement district, DCBID did *not* account for disproportionality with regard to nonprofit entities.

Second, the *Dahms* opinion does not support the Legislature's unconstitutional amendments to the Streets and Highways Code, upon which Respondents rely to justify DCBID's assessments. Specifically, the *Dahms* court held that the value of general benefits need not be deducted from the cost of providing special benefit services. This does not mean, as Respondents contend, that general benefits produced incidentally and collaterally to special benefits are to be categorized as special benefits. Nothing in *Dahms* supports this position, and in any case, DCBID fails to substantiate its blanket assertion that the January 1, 2015 amendments were based on *Dahms*.

Third, and in any case, RHF's argument is not that DCBID must deduct the value of

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[1] As discussed below, RHF's arguments are not directly on point with the issues in *Dahms,* which is why it was not discussed in RHF's Opening Brief. However, since both Respondents make *Dahms* the centerpiece of their arguments, RHF now will comprehensively discuss that case in this Reply.

general benefits from the cost of providing special benefits, which was the argument in *Dahms*. Rather, RHF's arguments are: (1) Respondents' reliance on unconstitutional amendments to the Streets and Highways Code, renders DCBID and its assessments unconstitutional; (2) the Engineer's Report, in describing purported special benefits, is actually describing general benefits as defined by Article XIII D of the California Constitution and as clarified by the California Supreme Court in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority,* 44 Cal.4th 431 (2008) – meaning that the issue here is not that certain incidental benefits are not accounted for but that the benefits to be produced by the services are general by definition, especially in connection with the marketing and public relations services; (3) DCBID's mischaracterization of general benefits as special benefits has resulted in an incomplete and inadequate separation and quantification of general benefits from special benefits – for example, DCBID incorrectly valued general benefits conferred to district parcels as zero – which is not supported by *Dahms*; (4) DCBID failed to take into consideration the difference between commercial and residential properties, as well as the difference between RHF's restricted properties and other residential properties, in calculating "proportional" assessments; and (5) the Engineer's Report further failed to adequately separate and quantify special benefits from general benefits by narrowly limiting general benefit to three types – the general benefit conferred on parcels inside the district, the 13 parcels outside of the district which are immediately adjacent to and not a part of another business improvement district, and the public at large, which only includes the people within the district who are not assessed. In other words, the *Dahms* holding does not address nor does it foreclose *any* of RHF's arguments. To the contrary, it supports RHF's position that different characteristics of different types of parcels must be taken into account when calculating constitutional assessments.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

Article XIII D section 4(f) indisputably provides, "In any legal action contesting the validity of any assessment, **the burden shall be on the agency** to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater

than, the benefits conferred on the property or properties in question." (Emphasis added); *see also Silicon Valley,* 44 Cal.4th at 443-50 ("Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted . . . [We] conclude that courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Proposition 218"); *Beutz v. County of Riverside,* 184 Cal.App.4th 1516, 1528-1529 (2010) ("Whether the County met its burden of demonstrating that the assessed properties received special benefits over and above general benefits and whether the assessment was proportional to, and no greater than, those special benefits are constitutional questions subject to this court's independent judgment or *de novo* review"); *Dahms,* 174 Cal.App.4th at 711 (2009) ("[T]he proper standard of review is de novo . . . Courts should exercise their independent judgment"). "No deference is owed to any of the [assessing agency's] determinations." *Beutz,* 184 Cal.App.4th at 152; *see also Silicon Valley,* 44 Cal.4th 431, 444-445 ("The drafters of Proposition 218 specifically targeted [the prior] deferential standard of review for change . . . [I]t is clear that the voters intended to reverse the usual deference accorded governmental action and to reverse the presumption of validity by placing the 'burden' on the agency").

Accordingly, the Engineer's Report and its findings are **not** owed any deference, and are subject to the Court's *de novo* review. That a professional engineer with 50 years of experience prepared the Engineer's Report does not alter the standard of review or burden of proof. Indeed, a professional engineer is required by law, and all of the case law invalidating business improvements involved independent judicial review of professionally prepared engineer's reports. *See, e.g., Silicon Valley,* 44 Cal.4th at 452-58; *Golden Hill Neighborhood Assn., Inc. v. City of San Diego,* 199 Cal.App.4th 416, 436-439 (2011) ("Local government must use a professional engineer's report to estimate the *amount* of special benefit landowners would receive from the project or service, as well as the *amount* of general benefit") (internal quotations omitted); *Beutz,* 184 Cal.App.4th at 1533-1536 (criticizing an engineer's reports' implicit and

unsupported conclusions).

Similarly, that a weighted majority of property owners approved the assessments in question does **not** alter the standard of review or burden of proof as asserted by Respondents. Specifically addressing this type of argument, the California Supreme Court provided, "[V]oter consent cannot convert an unconstitutional legislative assessment into a constitutional one . . . all valid assessments must both clear the substantive hurdles of article XIII D, section 4, subdivision (a) *and* be approved by a weighted majority of owners." *Silicon Valley,* 44 Cal.4th at 449.

Although the law is clear, DCBID fails even to reference section 4(f) of Article XIII D and confuses the issue by citing irrelevant and incorrect authorities. DCBID argues, "If Petitioners make a prima facie case, this Court employs independent review of the administrative record . . . But even that is not de novo; the Court's analysis begins with a presumption that the City Council's findings are correct." DCBID Brief at 7. **Nothing** in DCBID's statement is true: (1) no deference is owed to the City Council's findings; (2) the Court must review this matter *de novo*; and (3) RHF is not required to first make a *prima facie* showing before the Court conducts its independent review of this matter. The City too tries to confuse the applicable standard of review and burden of proof: "[T]he analysis must begin with a presumption that the City Council's findings are correct should the City present a *prima facie* case to support its decision." City's Brief at 9. This statement is **not** correct because, again: (1) no deference is owed to the City Council's findings; and (2) the burden of proof does not shift once the City presents a *prima facie* showing. No case law pertaining to business improvement districts supports either of Respondents' arguments. Accordingly, these intellectually dishonest arguments must be disregarded.

III. *DAHMS* DOES NOT FORECLOSE ANY OF RHF'S ARGUMENTS AND INSTEAD SUPPORTS RHF'S POSITION.

Dahms involved a business improvement district in Pomona, California, which levied assessments for security services, streetscape maintenance services, and marketing, promotion, and special event services. *Dahms,* 174 Cal.App.4th at 713 (upholding a business improvement district as compliant with Article XIII D requirements). **For nonprofit entities (e.g., religious**

organizations, clubs, lodges, and fraternal organizations), the *Dahms* business improvement district levied discounted assessments – "only 5 percent of the amount that [the nonprofit entities] would otherwise have to pay." *Id* (emphasis added). Properties zoned exclusively residential were exempted altogether from the business improvement district's assessments. *Id.*

The plaintiff in *Dahms* challenged the business improvement district, raising four issues, each of which the court discussed in turn: (1) whether the public hearing on the proposed assessment was prematurely scheduled (not pertinent here); (2) whether the amount assessed on each parcel exceeded the reasonable cost of the proportional special benefits conferred; (3) whether the City of Pomona adequately distinguished between special and general benefits; and (4) whether certain findings by the City of Pomona were supported by substantial evidence (also not pertinent). *Id.* at 714-25.

A. <u>Proportionality Analysis in *Dahms*.</u>

The proportionality analysis in *Dahms* is not quite on point because it entailed arguments which are different from RHF's: (a) that the discounts to nonprofits were not permitted by Article XIII D (which the *Dahms* court rejected, upholding the business improvement district's decision to levy discounted assessments to nonprofits); (b) that certain commercial properties were levied discounted assessments or not assessed at all (which the *Dahms* court rejected because of its analysis of the preceding argument and because the plaintiff failed to substantiate its argument with enough specificity, unable to even identify which commercial properties the plaintiff was alleging were supposedly not assessed); and (c) that certain parcels' assessments exceeded the reasonable cost of the proportional special benefit conferred on those parcels because each assessment was based, in part, on front footage rather than on total street length (which the *Dahms* court rejected). *Id.* at 715-21.

Although these specific three arguments are not relevant to the case at bar, the *Dahms'* court's discussion of the third argument is helpful to understand how this Court should analyze DCBID's services when considering the issue of proportionality:

Because not all parcels in the PBID are identical in size and other

> **characteristics, some will receive more special benefit than others** . . . It makes sense to use front footage rather than total street length to determine the proportional special benefit that a parcel will derive from the services of the PBID (e.g., increased security, litter removal, and graffiti removal). **For example, a clean and safe front entrance to a commercial parcel is more likely to constitute a special benefit to that parcel than a clean and safe side or rear, where there may or may not be any entrance at all.** At the same time, **the City's formula also takes into account other measures** . . . of each parcels' size and consequent proportional special benefit, **and those other measures should compensate for any disproportionality that might have resulted from exclusive reliance on front footage.** That is, if because of quirks of its shape and location, a small parcel has a large amount of front footage . . . the other factors in the assessment formula will compensate and render the total assessment proportional.

Id. at 720-21 (emphasis added).

In other words, the *Dahms* court recognized that whether a certain category of services constitutes special benefits depends not on what category of services is being rendered, but on the logical relationship between a specific parcel and the service being rendered. *See also Silicon Valley,* 44 Cal.4th at 453-54 (criticizing the engineer's report for failing to tie the purported special benefit to any particular property and for simply assuming that the expected special benefit would affect people and property equally). Following the *Dahms* court's logic, that a district provides cleaning, security, and marketing services, much like the ones provided in *Dahms,* does not automatically render its assessments constitutionally valid. The analysis requires more than a superficial look at what category of services is being provided. According to *Dahms,* even cleaning and security services are less likely to constitute special benefits in certain circumstances. *See also Beutz*, 184 Cal.App.4th at 1533 (2010) (criticizing an engineer's report because "[i]t [was] by no means clear from the Report that occupants . . . [would] use or benefit from the parks in a different manner, or more intensively, than persons from other communities"); *Golden Hill,* 199 Cal.App.4th at 425, 439 (invalidating a business improvement district whose services included trash removal, landscaping services, graffiti removal, homeless patrolling, Web site information, and special events).[2]

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[2] It is improper for Respondents to suggest that this Court judicially notice and follow the trial court ruling in the recent and different Article XIII D challenge to the assessment district in Venice Beach. DCBID's Brief at 13:5-9 (referring to *Marlene Okulick, et al. v. City of Los Angeles, et al.*, LASC Case No. BS166558). The issues in *Okulick* were very different from the issues here. First, the trial court in *Okulick* did not address the constitutionality of the

Thus, RHF's challenge is neither "foreclosed by *Dahms*" (DCBID's Brief at 8:12-13) nor rendered "largely irrelevant" by *Dahms* (City's Brief at 11:4-10). The Court must look past Respondents' efforts to mislead the Court with their false logic – that because the *Dahms* business improvement district was upheld, DCBID should be upheld. Instead, the Court must look at the unique characteristics of district properties to determine whether any (residential and RHF's restricted parcels) benefit differently from and/or less than other parcels in the district, thereby rendering certain assessments unconstitutionally excessive.

As discussed in RHF's Opening Brief, DCBID's assessments are indeed excessive as to RHF's properties and fail the proportionality prong of Article XIII D. RHF's properties, comprised of five high-rise towers, make up the largest affordable housing community for seniors in the United States and are home to approximately 1,300 low-income elderly residents who meet the affordability requirements established by the United States Department of Housing and Urban Development. As a result, RHF's properties do not benefit in the same manner or amount as commercial properties, as well as other residential properties, which can and most certainly do lease space at market rents. Nor do RHF's properties experience the same benefits as other properties, given the special nature and needs of their residents, who receive most of their services and live their lives almost entirely within the complex.

Moreover, it is critical to note that in *Dahms*, the court upheld a business improvement district which determined at the outset that nonprofit entities should be assessed only 5 percent of what they would pay were they not nonprofit entities. In this regard, *Dahms* suggests two things: that in certain circumstances, it is appropriate to discount and/or exclude certain nonprofit properties from assessments; and that the *Dahms* ruling is not dispositive here, as Respondents

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amendments to the Streets and Highways Code, upon which it relied to make its determinations. Moreover, the plaintiffs in *Okulick* argued that all of the district's services were general benefits and did not confer any special benefits – a position different from RHF's, which is that, among other things, DCBID did not adequately separate and quantify special benefits from general benefits. Most importantly, trial court decisions do not set precedent, and reliance on them, in lieu of actual precedent, would constitute error against the principle of *stare decisis*. *See Bolanos v. Superior Court,* 169 Cal.App.4th 744, 761 (2008) ("[T]rial court decisions . . . **have no precedential value** and are not citable authority) (emphasis added).

suggest, because the *Dahms* court did not have to consider whether the *Dahms* plaintiff's properties benefited differently or less than other properties within the business improvement district. Instead, the *Dahms* case suggests that the *Dahms* plaintiff's properties were the same as the rest (not nonprofit or zoned exclusively residential), and in that circumstance, the assessments were proportional and based only on special benefits. Similarly, the *Dahms* court did not have to consider whether marketing services – promoting businesses, investments and tourism – specially benefit properties which are limited in use and profitability. Thus, the *Dahms* case is actually harmful to Respondents' arguments, given that *Dahms* upheld a business improvement district's decision to treat nonprofit entities differently.[3]

The *Dahms* court additionally recognized that methodologies used to calculate assessments may lead to disproportionate results. *Dahms,* 174 Cal.App.4th at 720-21 (quoted above, "the City's formula also takes into account other measures . . . [which] should compensate for any disproportionality that might have resulted from exclusive reliance on front footage"). In *Dahms,* assessments were calculated using three factors: (1) street frontage (40% of the assessment); (2) building size (40% of the assessment; and (3) lot size (20% of the assessment). *Id.* at 713. In addressing the *Dahms* plaintiff's assertion that assessments exceeded the reasonable cost of the proportional special benefit because each assessment was based, in part, on front footage rather than on total street length, the *Dahms* court reasoned, "It makes sense to use front footage rather than total street length to determine the proportional special benefit that a parcel will derive from the services of the PBID (e.g., increased security, litter removal, and graffiti removal)." *Id.* at 720-21 ("Because not all parcels in the PBID are identical in size and other characteristics, some will receive more special benefit than others"). Thus, the

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[3] The business improvement district in *Beutz,* although invalidated, also took into consideration particular uses of parcels and only assessed residential parcels to fund the refurbishing, maintenance, and landscaping of four public parks: "All commercial and industrial properties, vacant land, **a senior citizen's retirement community,** and all publicly owned properties were **excluded from the District and the assessment on the ground none of them would specially benefit from the assessments.**" *Beutz,* 184 Cal.App.4th 1516, 1526 (2010) (emphasis added). The challenge in *Beutz* had nothing to do with the business improvement district's exemption of these properties.

Dahms court exercised independent judgment in determining whether the methodology used by the district resulted in proportional assessments (rather than simply presuming that the Engineer's Report's findings were supported).

Here, the Court must also exercise independent judgment to determine whether DCBID's method of calculating assessments alleviates the disproportionality, caused in part by DCBID's services' hyper-focus on economic enhancements, fostering visitation and patronage, and marketing a certain image of the neighborhood, and in part by DCBID's lack of analysis as to whether residential properties benefit less than and differently from commercial properties, and whether RHF's properties benefit less than and differently from commercial properties *and* other residential properties.

As already noted, the issue of proportionality is a bigger issue here than in *Dahms,* because the *Dahms* business improvement district remedied the disproportionality as to nonprofits at the outset of levying its assessments. Moreover, unlike the methodology employed in *Dahms,* DCBID's methodology consists exclusively of assessable square footage – the parcel/building size. Although the *Dahms* methodology used geometric considerations to calculate valid assessments, DCBID's *exclusive* reliance on only assessable square footage has resulted in disproportionate and unconstitutional assessments, *especially* given DCBID's failure to account for the fact that some parcels are used differently.

B. <u>Separation of General Benefits From Special Benefits in *Dahms*</u>

The plaintiff in *Dahms* argued that the City of Pomona failed to separate general benefits from special benefits. *Id.* at 721. Nothing more is provided on the plaintiff's argument, and the *Dahms* court presumed that the plaintiff's argument was that "if the PBID confers special benefits on the parcels within the PBID, and those special benefits themselves produce general benefits (either for the PBID or for the broader community), **then the value of those general benefits must be deducted from the cost of providing the special benefits and must not be included in any assessment.**" *Id.* at 723 ("Dahms *appears* to argue [this]") (emphasis added). The *Dahms* court rejected the argument that Article XIII D mandates the deduction of general benefits from the cost of providing special benefits:

> [N]othing in article XIII D says or implies that if the special benefits that are conferred also produce general benefits, then the value of those general benefits must be deducted from the reasonable cost of providing the special benefits before the assessments are calculated. Rather, the only cap the provision places on the assessments is that it may not exceed the reasonable cost of the proportional special benefit conferred on that parcel.

Id. at 724. The court explained its reasoning as follows:

> For example, according to [the plaintiff's] argument, if the reasonable cost of providing enhanced security services for the parcels in the PBID were $100,000, and those enhanced security services produced general benefits (e.g., increased property values or increased safety for the general public) valued at $70,000, then the $70,000 value of the general benefits would have to be deducted from the $100,000 cost of providing the special benefits (i.e., the enhanced security services for the parcels in the PBID), and only the remaining $30,000 could be assessed. The argument fails because . . . nothing in article XIII D says or implies that if the special benefits that are conferred also produce general benefits, then the value of those general benefits must be deducted from the reasonable cost of providing the special benefits before the assessments are calculated. Rather, the only cap the provision places on the assessment is that it may not exceed the reasonable cost of the proportional special benefit conferred on that parcel . . . [In other words] article XIII D prohibits *adding* the $70,000 value of the general benefits to the $100,000 cost of providing the security services and then imposing assessments totaling $170,000.

Id. at 723-24. Article XIII D section 4 indeed does not require a business improvement district to deduct the value of general benefits from the reasonable cost of special benefits. But it does require business improvement districts to limit their assessments to special benefits only. The court continued to clarify:

> For similar reasons, if the PBID provided security services to only one city block in downtown Pomona but imposed identical assessments on every parcel within a 20-block radius to pay for those services, on the ground that all those parcels would benefit from the safer environment, **then Dahms would have a strong argument that the distant parcels were being assessed for general benefits. He would also have a strong argument that the assessments would violate article XIII D's proportionality requirement, because the distant parcels would not benefit as much** as the parcels bordering the block that received the security services, but they would be paying identical assessments.[4]

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[4] It should be noted that the *Dahms* court again recognized (as it did in its discussion of proportionality that parcels are not deemed to receive special benefits by reason of the specific category of services being rendered, and for an assessment to be upheld, the services in connection with that assessment must directly confer special benefits, requiring "parcel-specific factors" to calculate individualized assessments which do not exceed the reasonable cost of the proportional special benefit conferred on district parcels. In other words, nothing in *Dahms* negates Article XIII D's requirement that to be upheld, a business improvement district must

Id. at 724 (emphasis added). The business improvement district in *Dahms,* the court determined, "suffer[ed] from neither of those defects[] [because] [t]he district provide[d] security (and other) services *directly to all* of the assessed parcels, and it [did] not impose identical assessments throughout the district but rather use[d] three parcel-specific factors to calculate an individualized assessment for each assessed parcel." *Id.* Furthermore, the business improvement district in *Dahms* had already accounted for the disproportionality to those parcels which were owned and used by nonprofit organizations or were zoned exclusively residential. *Id.* at 713.

Respondents' reliance on *Dahms* fails for a number of reasons, beginning with the fact that Respondents do not consider the fact that, unlike DCBID, the business improvement district in *Dahms* took into consideration the disproportionality with regard to nonprofit parcels by assessing them only 5 percent of what they would otherwise have to pay.

Additionally, that the *Dahms* court held that Article XIII D does not mandate a deduction of the value of general benefits does not mean that a business improvement district (or state legislature) can conclude that general benefits are deemed special benefits – the assessing agency must still separate and quantify the special benefits from the general benefits. In the *Dahms* court's hypothetical, the general benefits were still allotted a value of $70,000. Ignoring this, Respondents misconstrue the *Dahms* holding to mean that general benefits produced by services which provide special benefits do not have to be considered at all. This is error.

To the extent that the Streets and Highways Code was amended to support this misconstruction of the *Dahms* ruling, such amendments clearly violate the constitution. *See* Opening Brief at 13-14; *see also Silicon Valley,* 44 Cal.4th at 448 ("There is a clear limitation, however, upon the power of the Legislature to regulate the exercise of a constitutional right . . . All such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it"). For example,

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show that its assessments (1) are based only on special benefits, requiring a proper separation and quantification of special benefits from general benefits; and (2) do not exceed the proportional special benefit conferred on a specific parcel.

nothing in *Dahms* supports the Legislature's amendment to section 36601(h)(2), which, as amended, provides that "incidental or collateral effects of those special benefits are inherently part of those special benefits." Rather, *Dahms* concluded that "If the special benefits themselves produce certain general benefits, the value of those general benefits need not be deducted before the (caps on the) assessments are calculated." Thus, the Legislature's creation of a third kind of benefit (incidental and collateral benefits which are deemed to be special rather than general) unconstitutionally narrows the scope of Article XIII D, and Respondents' reliance on these amendments is tantamount to a concession that there are general benefits which DCBID deemed as special benefits, rendering DCBID unconstitutional.

RHF's arguments in its Opening Brief are unaffected by Respondents' incorrect reliance on *Dahms,* and Respondents have failed to adequately address them. To briefly summarize, RHF's arguments included: (1) the January 1, 2016 amendments to the Streets and Highways Code, permitting assessments for benefits which do not constitute special benefits pursuant to Article XIII D of the California Constitution, as interpreted by the California Supreme Court, are unconstitutional, and Respondents' reliance on the amendments to justify DCBID's assessments renders the assessments invalid; (2) in describing each of DCBID's services for the purpose of identifying the special benefits which are to be provided, the Engineer's Report mischaracterizes general benefits as special benefits, resulting in assessments which are unconstitutionally not based only on special benefits; (3) as to the Economic Development/Marketing Services, specifically, the Engineer's Report fails to identify the direct special benefit that parcels will receive, in part because these services amount to a public relations campaign, which obviously benefits the public at large more than it benefits parcels, and the Engineer's Report incorrectly concludes that the public at large will *not* enjoy these services at all; (4) the Engineer's Report fails to levy assessments which account for the differences between commercial properties and residential parcels, and the differences between other residential parcels and RHF's restricted residential parcels, resulting in disproportionate assessments; (5) the Engineer's Report fails to include a special benefit analysis of the Management Services, even if the resulting conclusion would have been that those services confer only special benefits (i.e., the issue here is that no

analysis was undertaken at all); and (6) the Engineer's Report further fails to adequately separate and quantify general benefits because it unsoundly limits general benefit to the general benefit received by (a) the parcels inside of the District, which purportedly receive zero general benefit, (b) the 13 parcels outside of the District, but which are immediately adjacent to the District and not within the boundaries of another adjacent business improvement district, and (c) the public at large which is limited to "the people that are within the PBID boundary that do not pay an assessment and do not specially benefit from the PBID activities."[5] DCBID must be invalidated based on any or all of these arguments, which are uncontradicted by *Dahms*.

IV. *GOLDEN HILL* AND *BEUTZ* FURTHER CLARIFY THE *DAHMS* RULING AND SUPPORT FINDING IN RHF'S FAVOR.

Respondents' misconstruction of the ruling in *Dahms* conflicts with the holding in *Golden Hill,* which involved a special assessment district in the City of San Diego, which provided "debris and litter removal, enhanced litter containers, sidewalk sweeping, sidewalk power washing, trash removal, landscaping services, graffiti removal, and trail and canyon beautification," as well as "homelessness patrolling, Web site information, and special events." *Golden Hill Neighborhood Assn., Inc. v. City of San Diego,* 199 Cal.App.4th 416, 420, 425, 439 (2011) (invalidating the assessment district).[6] Describing *Beutz* as "thoroughly explain[ing] article XIII D's benefit-separation requirement," the *Golden Hill* court applied the reasoning in *Beutz* to invalidate the business improvement district:

> [I]f special benefits represent 50 percent of total benefits, local government may

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[5] Special benefits, by definition, are only conferred on parcels. Cal. Const. Art. XIII D, § 2(i). Thus, people do not "specially benefit" from any of DCBID's services.

[6] Although the *Dahms* opinion is consistent with the opinions in *Beutz* and *Golden Hill,* discussed below, the City argues that *Dahms* is conflicting precedent to those cases, and therefore, the Court is bound by *Dahms*. *See* City's Brief at 11, fn 3. This is simply not true because even if *Dahms* were in conflict with *Beutz* and *Golden Hill,* the Court would have the discretion to choose to follow either of them. *See AutoEquity Sales, Inc. v. Superior Court,* 57 Cal.2d 450, 456 (1962) (when there are appellate decisions in conflict, the trial court "can and must make a choice between the conflicting decisions"). In this event, the trial court should choose to follow the precedent of *Beutz* and *Golden Hill* because they are more recent in time and better reasoned.

> use assessments to recoup half of the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits. Thus, the *Beutz* court noted, separating the general from the special benefits of a public improvement project *and* estimating the *quantity* of each in relation to the other is essential if an assessment is to be limited to the special benefits.

Id. at 436 (internal citations omitted). The *Golden Hill* court continued:

> We agree with the *Beutz* court's repeated emphasis that the general and special benefits conferred on real property by a service or improvement for which a special assessment is to be levied must be separated and quantified. Generally, this separation and quantification of general and special benefits must be accomplished by apportioning the cost of the service or improvement between the two and assessing property owners only for their portion of the cost representing special benefits. That is, the agency must determine or approximate the percentage of the total cost of the service or improvement from the special assessment levied against the specially benefitted property owners.

Id. at 438.

The *Golden Hill* court used street lighting services as an example of services that provide both a special benefit for residents of the street and a general benefit to the general public using the street: "a reasonable separation and quantification of general and special benefit would be to determine the approximate percentage of daily (or nightly) trips on the street made by the specially benefitted residents as opposed to other members of the public and recoup only the percentage of the cost of the lighting through the special assessment." *Id.* at 438, fn 18. It is not enough for an engineer's report to broadly state that certain services directly and specially benefit district parcels while outside parcels do not receive the benefit, and therefore, the assessments provide a special benefit to district parcels over and above the general benefits:

> The statement in the engineer's report that "the assessments provide special benefit to property in the various Districts over and above the general benefits conferred by the general facilities of the City . . ." does not establish that the assessments would not also provide general benefit in addition to special benefit. As the *Beutz* court noted, "[the] courts of this state have long recognized . . . that virtually all public improvement projects provide general benefits." Here, the statement in the engineer's report that "the properties outside the District do not receive the benefit of the Services funded by the District"' . . . does not establish that the general public within the and outside of the District would not receive some benefit from these services. A number of the services specified in the engineer's report, including trail beautification, homelessness patrolling, Web site information, and special events, provide obvious benefit to the general public.

Id. at 439 (agreeing with the trial court's finding that there was "no foundation for the statement

in the engineers' report that 'the Services funded by the District are determined to be exclusively of distinct and special benefit to properties in the District'"). Noting that the *Golden Hill* engineer's report acknowledged that its services would confer some *minimal* general benefits, the court clarified, "[E]ven *minimal* general benefits must be separated from special benefits and quantified so that the percentage of the cost of services and improvement representing general benefits, however slight, can be deducted from the amount of the cost assessed against specially benefitting properties." *Id.*

It is clear from the *Golden Hill* ruling that DCBID and its assessments, as supported by the Engineer's Report, are constitutionally infirm. First, Respondents' argument that the districts in *Beutz* and *Golden Hill* are too different from DCBID to be relevant to the Court's determination is false. The *Golden Hill* business improvement district clearly provided the same services that DCBID is to provide: cleaning and safety services and marketing/special events.[7] Further *Golden Hill,* in applying *Beutz,* makes clear that it does not matter what type of services are being provided in determining whether a district is constitutionally valid. Thus, Respondents' efforts to steer the Court away from *Golden Hill* and *Beutz* should be disregarded.

Second, the *Golden Hill* street lighting hypothetical makes clear that a service which is directly provided to a specific parcel will still provide general benefits to the public, *and* the assessing agency must analyze how much of the benefit would be special and how much benefit would be general – not just conclude that since it is "over and above" the services already

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[7] Similarly unavailing is Respondents' reliance on *Town of Tiburon v. Bonander,* 180 Cal.App.4th 1057 (2009) (invalidating an assessment district for its failure to levy proportional assessments for the special benefit of placing utility lines underground) and *City of Saratoga v. Hinz,* 115 Cal.App.4th 1202 (2004) (a city's eminent domain action against a defendant who untimely challenged an assessment district as an affirmative defense). In *Tiburon,* the service of placing eyesore utility lines underground was found to be a special benefit, with no general benefit. *Tiburon,* 180 Cal.App.4th at 1080. This service was narrowly tailored to assessed parcels, whereas, DCBID's services are not so narrowly tailored. Thus, *Tiburon* does not support DCBID's finding of minimal general benefits from its clean and safety services and no general benefits from its marketing and special events services. The challenge in *Saratoga* was time-barred, and the court's analysis with regard to general benefits was in the context of an eminent domain analysis of public interest and necessity. *Saratoga,* 115 Cal.App.4th at 1222-1225. *Saratoga* is thus not helpful to the case at bar.

provided by the City, it is special. Specifically, DCBID cannot simply rely on the fact that its services are "over and above" the services already provided to conclude that the district parcels will receive zero general benefit, only 13 outside parcels will generally benefit from the anticipated vitality of the neighborhood, and the public at large (which is limited to the people within the district who are not assessed – clearly not truly the public at large) will only receive "conceivable" general benefit from the clean and security services and no general benefit at all from the marketing and special events. Thus, the Engineer's Report concludes that a special event, such as a music concert, will only directly benefit the district's real estate. DCBID's Engineer's Report, like the *Golden Hill* engineer's report, substantively fails to establish its compliance with Article XIII D.

V. RESPONDENTS' ADMINISTRATIVE EXHAUSTION DEFENSE IS MERITLESS.

In arguing that RHF did not exhaust its administrative remedies, DCBID asserts, "Petitioners had an opportunity to voice their opposition, but they neither filed a written protest nor submitted a speaker card to voice their concerns from the floor." DCBID's Brief at 23. The City makes the same suggestion that RHF was required to present evidence and argument, in addition to their opposing ballots, at the hearing on June 7, 2017. City's Brief at 10. DCBID is not being candid with the Court because RHF submitted an opposing ballot for each of the subject properties, which were signed and dated and provided, "**No.** I disapprove of the establishment of the Downtown Center 2018-2027 property based Business Improvement District." AR 294-293. This was in accordance with the instructions which DCBID provided in its notice, which is void of any indication that the June 7, 2017 hearing was evidentiary in nature. AR 00273. It is unclear whether DCBID is making the argument that an opposing ballot does not constitute a written protest because DCBID ignores the fact that opposing ballots exist. *See e.g.,* DCBID's Brief at 5:20-6:17, 23:6-16. It is clear that the City is making this argument. Although Respondents cite to various authorities, none support a contention that an opposing ballot, filled out and submitted by mail as instructed by the assessing agency, does not constitute

a written protest under Streets and Highways Code section 36623.[8]

A. <u>The Law Does Not Support Respondents' Arguments.</u>

Subsections (c) through (e) of section 4 of Article XIII D, to which DCBID cites, contradict DCBID's argument by specifying that the procedural requirements, which are imposed on the assessing agency, include the requirement that the assessing agency's written notice of its proposed assessments "include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest . . . will result in the assessment not being imposed." *See* Const. art. XIII D § 4(c). A majority protest, pursuant to subdivision (e), exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessments." Subsection (d) further clarifies, "Each notice . . . shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner of the parcel, and his or her support or opposition to the proposed assessment." None of these subsections supports DCBID's argument that submitting an opposing ballot does not constitute a written protest. The California Constitution makes clear that an opposing ballot is a written protest, specifically in subsection (d) of section 4 of article XIII D, which provides, "A majority protest . . . exists if . . . ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment." Even under Streets and Highways Code section 36623, which incorporates Government Code section 53753, a ballot (to be counted) constitutes a written protest: "A written protest that does not comply with this section shall not be **counted** in determining a majority protest." (emphasis added). *See also Golden Hill,* 199 Cal.App.4th at 432 (discussing Government Code section 53753 and citing *Greene v. Marin County Flood Control & Water*

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[8] Respondents also cannot be heard to make an exhaustion argument given their failure to identify <u>any</u> of the issues raised in their briefs in response to RHF's Form Interrogatory 15.1, which specifically inquired into the basis for Respondents' affirmative defenses, including exhaustion. *See* Exs. A and B to Raucher Decl. *Thoren v. Johnston & Washer*, 29 Cal.App.3d 270, 274 (1972).

Conserv. Dist., 49 Cal.4th 277, 286 (2010), as pertaining to a weighted ballot tabulation, without any mention of an additional written protest).

The City's exhaustion argument is similar to DCBID's, but the City at least concedes that RHF submitted opposing ballots, although suggests that this was not enough. City's Brief at 10:13-20. As already discussed, Government Code section 53753, incorporated by Streets and Highways Code section 36623, does not support the argument that more than an opposing ballot is necessary to be counted as a protest. Additionally, the hearing on DCBID's assessments was not a hearing where RHF was expected to or instructed to present evidence and argument on substantive challenges. No case law supports such a finding. Rather, the hearing was procedurally required to tabulate weighted ballots, determining whether a majority protest existed against DCBID and its assessments. As such, Streets and Highways Code section 36633 separately provides that a lawsuit contesting the *validity* of DCBID's assessments must be commenced within 30 days of the adoption of the ordinance levying DCBID's assessments.

B. <u>The Case Law On Which Respondents Rely Does Not Support Their Arguments.</u>

Notwithstanding the law, DCBID makes a sloppy effort to argue that RHF's action is barred by the exhaustion doctrine, citing various authorities which do not support its position. For example, in *Wallich,* the case on which DCBID mainly relies, it was determined that the plaintiff "neither pled nor established it had exhausted its administrative remedies . . . [and] did not in any way challenge the District's budgets" under California Food and Agricultural Code sections 8559-8568 ("Pest Control Law"). *Wallich's Ranch Co. v. Kern County Citrus Pest Control Dist.,* 87 Cal.App.4th 878, 883-85 (2001) (pertaining to assessments imposed to control and eradicate a harmful citrus tree virus). The plaintiff argued that there was no exhaustion requirement contained in the Pest Control Law, which the *Wallich* court conceded was not well written and does not specify that administrative remedies must first be exhausted. *Id.* at 883-84. However, the *Wallich* court held, "<u>Given the public health and safety issues inherent in the Pest Control Law</u>, in addition to the policy of resolving disputes expeditiously, we find the general exhaustion rule applicable." *Id.* at 883-84 (emphasis added). Accordingly, the *Wallich* court concluded that the action was "barred based on the failure of [plaintiff] to exhaust its

administrative remedies under the Pest Control Law," which required the plaintiff to make a written protest against the budget which is adopted annually after a noticed hearing. *Id.* at 883-84. The *Wallich* court further reasoned, "If we allowed [citrus] growers to sit back and wait until some undisclosed future time to challenge the effectiveness of a plan, we would promote inconsistent and multiple results through litigation in different courts." *Id.* at 884.

DCBID fails to discern that the *Wallich* court found that there was a general exhaustion requirement under the Pest Control Law, which is inapplicable here and critically different from the Property and Business Improvement District Law of 1994 ("PBID Law"). The Pest Control Law provides that a hearing on a budget is to be set (section 8560) and at the time set for hearing protests, "the board shall proceed to hear and pass all protests so made and its decision on protests shall be final and conclusive" (section 8565). In contrast, Streets and Highways Code section 36623, incorporating Government Code section 53753 (which reiterates the procedural requirements of Article XIII D § 4(c)-(e)), specifically describes what DCBID correctly identifies in its brief as a "mailed ballot protest proceeding," which RHF participated in and completed. *See* DCBID's Brief at 22:1 (emphasis added). Unlike the Pest Control Law, the PBID Law explicitly instructs that a challenge contesting the validity of an assessment be "commenced within 30 days after the resolution levying the assessment is adopted." *See* Sts. and High. Code § 36633 (entitled, "Time for contesting validity of assessment"). RHF commenced this litigation on July 3, 2017, within 30 days of the adoption of the ordinance levying DCBID's assessments on June 7, 2017 (and approved by the Mayor of Los Angeles on June 13, 2017). Thus, the concern expressed by the *Wallich* court does not exist here.

Finally, as the Court of Appeal in *Plantier* recognized, the *Wallich* court "did not impose an exhaustion requirement under Proposition 218 [and] [i]n fact . . . found the district in the case was exempt from Article XIII D."[9] *See Plantier v. Ramona Municipal Water Dist.,* 12

[9] RHF understands that *Plantier* is under review by the California Supreme Court, and, in any case, involved the analysis of Article XIII D section 6 (which pertains to fees and charges), and not section 4. *Plantier,* 12 Cal.App.5th at 867-68. However, the two sections are similar, and the Court of Appeal in *Plantier* questioned whether a substantive challenge even "falls within the purview of [the procedural requirements section]." *Id* ("[T]he administrative remedy

Cal.App.5th 856, 872 (2017). Thus, the *Wallich* case is irrelevant under both PBID Law and Article XIII D. DCBID's exhaustion argument must therefore be disregarded.[10]

Like DCBID, the City cites to various irrelevant authorities to superficially bolster its argument. *See e.g., Williams & Fickett v. County of Fresno,* 2 Cal.5th 1258 (2017) (pertaining to procedures to obtain a property tax reduction pursuant to California Revenue and Taxation Code section 5140); *N. Coast Rivers All. v. Marin Mun. Water Dist. Bd. of Dirs.,* 216 Cal.App.4th 614 (2013) (pertaining to procedures under the California Environmental Quality Act); *Barnes v. State Bd. of Equalization,* 118 Cal.App.3d 994 (1981) (pertaining to procedures to obtain a refund of an allegedly overpaid sales and use tax). The City's cases are obviously not on point and should be disregarded.

VI. CONCLUSION

For the foregoing reasons, RHF requests that the Court invalidate DCBID's assessments generally and specifically as applied to RHF's properties.

DATED: August 28, 2018

REUBEN RAUCHER & BLUM

By: _____
Stephen L. Raucher
Attorneys Petitioners/Plaintiffs

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in subdivision (a)(2) of section 6 is limited to a protest over the imposition of, or increase in, rates for . . . fees, as opposed to protests over whether District complied with the substantive requirements of subdivision (b) of this section"). The Court of Appeal then went on to suggest that even if a substantive challenge falls within the scope of the administrative remedies set forth in the procedural requirements section, those administrative remedies are inadequate. *Id.* at 868.

[10] To superficially bolster its argument, DCBID improperly cites to various other irrelevant authorities, which the Court should disregard. *See e.g., Napa Citizens for Honest Government v. Napa County Bd. Of Supervisors,* 91 Cal.App.4th 342 (2001) (pertaining to procedures under the California Environmental Quality Act); *Coalition for Student Action v. City of Fullerton,* 153 Cal.App.3d 1194 (1984) (pertaining to procedures under the California Environmental Quality Act); *California Native Plant Society v. City of Rancho Cordova,* 172 Cal.App.4th 603 (2009) (pertaining to procedures under the California Environmental Quality Act); *City of San Jose v. Operating Engineers Local Union No. 3,* 49 Cal.4th 597 (2010) (pertaining to procedures under the Meyers-Milias-Brown Act); *Roth v. City of Los Angeles,* 53 Cal.App.3d 679 (1975) (pertaining to procedures to recover taxes contained in the California Revenue and Taxation Code and Government Code section 39585).

DECLARATION OF STEPHEN L. RAUCHER

I, STEPHEN L. RAUCHER, declare as follows:

1. I am an attorney at law, duly licensed to practice before this Court and all the courts of the State of California. I am a partner at the firm of Reuben Raucher & Blum, and am counsel of record for Plaintiffs/Petitioners in this matter. I have direct personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify to those facts under oath.

2. The Fifth Affirmative Defense (Lack of Standing) in DCBID's Answer alleged as follows: "DCBID is informed and believes, and on that basis alleges that RHF does not have standing to sue DCBID because, among other things, it failed to exhaust its administrative remedies."

3. RHF issued Form Interrogatories, which, in part, required DCBID to identify the affirmative and special defenses alleged in its pleadings and to provide the facts upon which those defenses were based.

4. In connection with DCBID's Fifth Affirmative Defense, the totality of DCBID discovery response was: "Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of lack of standing if facts arise to support its assertion." A true and correct copy of DCBID's Form Interrogatory 15.1 response, in relevant part, is attached hereto as **Exhibit A.**

5. Paragraph 92 of the City's Answer alleged "[t]hat the Plaintiff's claims are barred for failure to exhaust administrative remedies and/or identify issues of dispute prior to bringing suit in Superior Court."

6. RHF issued Form Interrogatories, which, in part, required the City to identify the affirmative and special defenses alleged in its pleadings and to provide the facts upon which those defenses were based.

7. In connection with the City's defense in Paragraph 92 of its Answer, the totality of the City's discovery response was: "Plaintiffs failed to assert their claims as required by the City's laws, the laws of California, the California Constitution, and common law doctrine[.]" A

true and correct copy of the City's Form Interrogatory 15.1 response, in relevant part, is attached hereto as **Exhibit B.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of August, 2018 at Los Angeles, California.

Stephen L. Raucher

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Attorneys for Respondent/Defendant
DOWNTOWN CENTER BUSINESS
IMPROVEMENT DISTRICT
MANAGEMENT CORPORATION
(also sued erroneously as Downtown
Center Business Improvement District)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HILL RHF HOUSING PARTNERS, L.P. a California limited partnership; OLIVE RHF HOUSING PARTNERS, L.P., a California limited partnership,

Petitioners/Plaintiffs,

v.

CITY OF LOS ANGELES; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT, a special assessment district in the City of Los Angeles; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION, a California nonprofit corporation; and DOES 1 through 10, inclusive,

Respondents/Defendants.

Case No. BS170127
Unlimited Jurisdiction

(Case assigned to Hon. Amy Hogue)

DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO FORM INTERROGATORY NO. 15.1

Complaint Filed: July 3, 2017
Trial Date: TBD

PROPOUNDING PARTY: Hill RHF Housing Partners, L.P. and Olive RHF Housing Partners, L.P. ("Propounding Parties")

RESPONDING PARTY: Downtown Center Business Improvement District Management Corporation ("DCBID")

SET NO: One

EXHIBIT A

Third Affirmative Defense: Estoppel (ANSWER, p. 11.)

(a) Plaintiffs admittedly will receive and have received services worth hundreds of thousands of dollars. They are estopped from claiming they do not specially benefit from DCBID's activities, or, alternatively, owe the City for that amount should the DCBID not be allowed to make special assessments under Article XIID. Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of estoppel if facts arise to support such an assertion.

(b) Carol Schatz and Suzanne Holley may be contacted through DCBID's attorneys, Holly O. Whatley, Pamela K. Graham, and Aleks R. Giragosian of Colantuono, Highsmith & Whatley, PC, 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101, telephone number (213) 542-5700.

(c) The documents attached to the Petition are relevant to this issue. In addition, DCBID anticipates relevant documents will be produced by all parties to this litigation as the discovery process is just beginning.

Fourth Affirmative Defense: Unclean Hands (ANSWER, p. 11.)

(a) Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of unclean hands if facts arise to support such an assertion.

(b) Carol Schatz and Suzanne Holley may be contacted through DCBID's attorneys, Holly O. Whatley, Pamela K. Graham, and Aleks R. Giragosian of Colantuono, Highsmith & Whatley, PC, 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101, telephone number (213) 542-5700.

(c) The documents attached to the Petition are relevant to this issue. In addition, DCBID anticipates relevant documents will be produced by all parties to this litigation as the discovery process is just beginning.

Fifth Affirmative Defense: Lack of Standing (ANSWER, p. 11.)

(a) Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of lack of standing if facts arise to support such an assertion.

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

(b) Carol Schatz and Suzanne Holley may be contacted through DCBID's attorneys, Holly O. Whatley, Pamela K. Graham, and Aleks R. Giragosian of Colantuono, Highsmith & Whatley, PC, 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101, telephone number (213) 542-5700.

(c) The documents attached to the Petition are relevant to this issue. In addition, DCBID anticipates relevant documents will be produced by all parties to this litigation as the discovery process is just beginning.

Sixth Affirmative Defense: Fraud (ANSWER, p. 12.)

(a) Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of fraud if facts arise to support such an assertion.

(b) Carol Schatz and Suzanne Holley may be contacted through DCBID's attorneys, Holly O. Whatley, Pamela K. Graham, and Aleks R. Giragosian of Colantuono, Highsmith & Whatley, PC, 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101, telephone number (213) 542-5700.

(c) The documents attached to the Petition are relevant to this issue. In addition, DCBID anticipates relevant documents will be produced by all parties to this litigation as the discovery process is just beginning.

Seventh Affirmative Defense: Failure to Mitigate (ANSWER, p. 12.)

(a) Discovery in this matter is ongoing, and DCBID does not waive its right to assert the affirmative defense of failure to mitigate if facts arise to support such an assertion.

(b) Carol Schatz and Suzanne Holley may be contacted through DCBID's attorneys, Holly O. Whatley, Pamela K. Graham, and Aleks R. Giragosian of Colantuono, Highsmith & Whatley, PC, 790 E. Colorado Boulevard, Suite 850, Pasadena, California 91101, telephone number (213) 542-5700.

///

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790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

(c) The documents attached to the Petition are relevant to this issue. In addition, DCBID anticipates relevant documents will be produced by all parties to this litigation as the discovery process is just beginning.

DATED: June 18, 2018

COLANTUONO, HIGHSMITH & WHATLEY, PC

MICHAEL G. COLANTUONO
HOLLY O. WHATLEY
PAMELA K. GRAHAM
Attorneys for Respondent/Defendant
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PROOF OF SERVICE

Hill RHF Housing Partners v. City of Los Angeles, et al.
Los Angeles Superior Court Case No. BS 170127

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Blvd., Suite 850, Pasadena, CA 91101. On **June 18, 2018,** I served the document(s) described as: **DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO FORM INTERROGATORY NO. 15.1** on the interested parties in this action by placing a true copy thereof enclosed in a scaled envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY FACSIMILE**: By transmitting via facsimile the document(s) listed above to the fax number(s) set forth above on this date.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION**: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed on the attached service list.

☐ **BY MAIL**: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

☐ **OVERNIGHT DELIVERY**: By overnight delivery, I placed such document(s) listed above in a sealed envelopes, for deposit in the designated box or other facility regularly maintained by FEDERAL EXPRESS or GOLDEN STATE OVERNIGHT (GSO) for overnight delivery. I caused such envelopes to be delivered to the office of the addressees listed on the attached service list via overnight delivery pursuant to C.C.P. §1013(c), with delivery fees fully prepaid or provided for.

☐ **PERSONAL SERVICE**: I caused such envelopes to be delivered by hand to the addresses indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 18, 2018,** at Los Angeles, California.

Angelo McCabe

SERVICE LIST

Hill RHF Housing Partners v. City of Los Angeles, et al.
Los Angeles Superior Court Case No. BS 170127

Timothy D. Reuben Stephen L. Raucher Hana S. Kim Reuben Raucher & Blum 12400 Wilshire Blvd,, Suite 800 Los Angeles, CA 90025 Tel: 310-777-1990 Fax: 310-777-1989 sraucher@rrbattorneys.com hkim@rrbattorneys.com nquach@rbbattorneys.com	*Attorney for Plaintiffs* *Hill RHF Housing Partners, L.P. and* *Olive RHF Housing Partners, L.P.*
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HILL RHF HOUSING PARTNERS, L.P.; OLIVE RHF HOUSING PARTNER, L.P.,

Petitioners/Plaintiffs,

vs.

CITY OF LOS ANGELES *et al*,

Respondents/Defendants.

CASE NO.: BS170127

RESPONDENT CITY OF LOS ANGELES'S RESPONSE TO FORM INTERROGATORIES

EXHIBIT B

Kirstin Lowell, contact information provided upon request

c. Defendant refers to and hereby incorporates by reference all of the documents set forth in Attachment 1 to Plaintiff's Requests for Admission

Defendant's investigation is ongoing and Defendant expects to gather additional information and documents prior to trial

92. Objection. Unfairly and unreasonably duplicates requests made with respect to Interrogatory 17.1. The Requests for Admission seek information regarding all of the information sought here, and the City's response to Interrogatory 17.1 fully satisfy any need Plaintiff has for information in this matter. Notwithstanding and without waiving any objection:

a. Plaintiffs failed to assert their claims as required by the City's laws, the laws of California, the California Constitution, and common law doctrine

b. Miranda Paster, contact information provided upon request

Daniel M. Whitley, contact information provided upon request

Kirstin Lowell, contact information provided upon request

c. Defendant refers to and hereby incorporates by reference all of the documents set forth in Attachment 1 to Plaintiff's Requests for Admission

Defendant's investigation is ongoing and Defendant expects to gather additional information and documents prior to trial

93. Objection. Unfairly and unreasonably duplicates requests made with respect to Interrogatory 17.1. The Requests for Admission seek information regarding all of the information sought here, and the City's response to Interrogatory 17.1 fully satisfy any need Plaintiff has for information in this matter. Notwithstanding and without waiving any objection:

a. Plaintiffs failed to assert their claims as required by the City's laws, the laws of California, the California Constitution, and common law doctrine, and do not fairly represent the amount they benefit from the services provided by the DCBID

Response to Request No. 82.

The City objects to this entire Interrogatory as not being likely to lead to admissible evidence and being unduly and unreasonably duplicative.

a. As above.

b. The City refers to the documents referenced below

The City's investigation is ongoing and the City expects that additional information will be available at trial

c. Miranda Paster, contact information provided upon request

Daniel M. Whitley, contact information provided upon request

Kirstin Lowell, contact information provided upon request

The City's investigation is ongoing and the City expects to discover additional witnesses prior to trial

d. Defendant refers to and hereby incorporates by reference all of the documents set forth in Attachment 1 to Plaintiff's Requests for Admission

The City's investigation is ongoing and the City expects to discover additional documents prior to trial

CERTIFICATION

I certify under penalty of perjury under the laws of the State of California that the foregoing answers and responses are true and correct and that I am authorized by the City of Los Angeles to submit the foregoing responses.

DATED: October 23, 2017 By: _____
Miranda Paster

I, Daniel M. Whitley, am one of the attorneys for respondent. Pursuant to the provisions of the Code, I hereby sign the response.

DATED: October 27, 2017

MICHAEL N. FEUER, City Attorney
BEVERLY A. COOK, Assistant City Attorney
DANIEL WHITLEY, Deputy City Attorney

By: _____
DANIEL WHITLEY
Attorneys for Defendant City of Los Angeles

PROOF OF SERVICE

Ricardo Villalobos

I, ~~Cynthia Marchena~~, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On October 27, 2017, I served the forcgoing document described as: **ANSWER TO VERIFIED PETITION,** on the interested parties in this action by placing a **[X]** true copy [ ] original copy thereof enclosed in a sealed envelope addressed as follows:

Timothy D. Reuben, Esq.
REUBEN RAUCHER & BLUM
12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

[X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thercon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angcles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] BY PERSONAL SERVICE - ( ) I delivered by hand, or ( ) I caused to be delivered via messenger service, such envelope to the offices of the addressec with delivery time prior to 5:00 p.m. on the date specified abovc.

[ ] BY OVERNIGHT COURIER - I caused the above-rcferenced document(s) to be delivered to DHL, an overnight courier service, for delivery to the above addressee(s).

[ ] BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the above-named person(s).

[ ] Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[x] State - I declarc under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 27, 2017, at Los Angeles, California.

~~Cynthia Marchena~~
Ricardo Villalobos

PROOF OF SERVICE BY E-MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is **12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.**

On August 28, 2018, I served the foregoing document described as:

PLAINTIFFS'/PETITIONERS' REPLY BRIEF

on all interested parties in this action by *emailing* a true copy thereof to counsel for all interested parties pursuant to the Consent to Electronic Service And Notice of Electronic Notification Address in accordance with California Rules of Court 2.251 as follows:

Daniel M. Whitley, Esq. Deputy City Attorney City Hall East 200 N. Main Street, Room 920 Los Angeles, CA 90012 Telephone: (213) 978-7786 Facsimile: (213) 978-7811 Email: daniel.whitley@lacity.org *Attorneys for City of Los Angeles*	Michael G. Colantuono, Esq Holly O. Whatley, Esq. Pamela K. Graham, Esq. Colantuono, Highsmith & Whatley, PC 790 East Colorado Boulevard, Suite 850 Pasadena, CA 91101 Telephone: (213) 542-5700 Facsimile: (213) 542-5710 Email: mcolantuono@chwlaw.us Email: hwhatley@chwlaw.us Email: pgraham@chwlaw.us *Attorneys for Downtown Center Business Improvement District Management Corporation*

I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business. I emailed the above referenced documents, by agreement of the parties, to the address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2018, at Los Angeles, California.

Nathalie Quach